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Civil Procedure And Evidence—Review of Administrative Action

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sioner of Education, were the only methods of appeal the Legislature intended the petitioner to have. Though the Court of Appeals recognized that a trial de novo is a cumbersome device, it also stated that there are situations where a trial de novo is of right, as when the Public Service Commission prescribes rates to be charged by a utility that are allegedly confiscatory,[78] or in an action to recover a chattel where the value of the property together with any damages recovered, exceeds one hundred dollars.[79]

The Board of Education also based its argument on the fact that petitioner was dismissed under Education Law section 6206, subdivision 10,[80] rather than Civil Service Law section 12-a. This, they argued, meant that petitioner's only choice of appeal was to the Commissioner of Education under Education Law section 310. The Court disagreed saying the dismissal was grounded on Civil Service Law section 12-a,[81] in that the professor was dismissed because he was a member of the Communist party, a group which advocates overthrow of the government by force or violence.[82]

The Court also disregarded the Board's suggestion that "may" in section 12-a(d) meant something less than an absolute right to go to the Supreme Court, Special Term, saying that this interpretation would render section 12-a(d) meaningless. In light of the consequences that could result from a teacher's dismissal, and his possible permanent ineligibility for any state public office, this decision seems correct; the petitioner should be allowed the maximum safeguard, a trial de novo.

Review of Federal Administrative Action

State courts have no power to revise or review, either directly or indirectly, federal governmental action by authorized federal officers performed under authority of acts of Congress.[83] *Fieger v. Glen Oaks Village Inc.*[84] is in line with this principle.

78. *Staten Island Edison Corp. v. Maltbie*, 296 N.Y. 374, 73 N.E. 2d 705 (1947).
79. N. Y. JUSTICE COURT ACT §442.
80. This section allows dismissal for "conduct unbecoming a member of the staff."
81. Section 12a: "No person shall . . . be continued in . . . employment, . . . as teacher in . . . college, . . . who: (a) . . . advocates . . . that government of the United States . . . should be overthrown . . . by force . . .; or (c) . . . becomes a member of any . . . group . . . which teaches or advocates that the government of the United States . . . shall be overthrown by force or violence, or by any unlawful . . . ."
82. *Thompson v. Wallin*, 301 N.Y. 476, 95 N.E. 2d 806 (1950).
83. *Wasservogel v. Meyerowitz*, 300 N.Y. 125, 89 N.E. 2d 712 (1949); *Schmoll, Inc. v. Federal Reserve Bank*, 286 N.Y. 503, 37 N.E. 2d 225 (1941).
84. 309 N.Y. 527, 132 N.E. 2d 492 (1956).

Plaintiffs, representing themselves and other tenants of Glen Oaks Village, brought an action to require the landlord to account for loss and damages sustained due to allegedly excessive rent. The Court affirmed the dismissals by the courts below[85] on the dual grounds of lack of jurisdiction over the subject matter and of failure to state a cause of action.[86]

The defendant owned an F.H.A. housing project the rental of which was fixed by the Federal Administrator under the provisions of the National Housing Act.[87] The determination of rent schedules by the Administrator was Federal governmental action by an authorized Federal officer.

Plaintiff contended that while defendant charged no more than maximum rent, the Administrator based his determination of maximum rental upon fraudulent misrepresentations, made by the defendant, as to the cost of the property rented.

The plaintiff may have had a cause of action had defendant exceeded the maximum rental,[88] but the tenant who claims to have been deprived of rights under rent laws by false misrepresentations to government authorities has no remedy by suit in a state court unless there is a specific statute giving him such a remedy.[89] Here plaintiff cited no such statute.

Thus the plaintiffs can have no relief in the state court until they are able to get the rent schedules set aside by Federal authority, or until Congress authorizes such suits. To allow them to bring an action before this is accomplished would have the effect of permitting a state court, by its decision on collateral attack, to substitute its determination for that of a Federal administrative agency.

Appeal—Review of Discretionary Decisions

In *O'Connor v. Papertsian*,[90] the Court was again faced with the question of whether the Appellate Division has the power to render final judgment upon

85. 206 Misc. 137, 132 N.Y.S. 2d 88 (Sup. Ct. 1954); 285 App. Div. 814, 136 N.Y.S. 2d 539 (2d Dep't 1955).

86. N. Y. R. CIV. PRAC. 106. After the service of the complaint, the defendant may serve notice of motion for judgment dismissing the complaint . . . where it appears on the face thereof: 1.) That the court has not jurisdiction of the subject of the action . . . 4.) That the complaint does not state facts sufficient to constitute a cause of action.

87. 12 U.S.C.A. 1743 et. seq.

88. *Brinkman v. Urban Realty Co.*, 10 N. J. 113, 89 A2d 394 (1952); *Parkin v. Damen-Ridge Apts.*, 348 Ill. App. 428, 109 N.E. 2d 363 (1952).

89. *Rosner v. Textile Binding & Trimming Co.*, 300 N.Y. 319, 90 N.E. 2d 481 (1950).

90. 309 N.Y. 465, 131 N.E. 2d 883 (1956).